

**RESOLUTION NO. 1591
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION APPROVING AN AMENDMENT TO FUNDING AGREEMENT
BETWEEN CITY OF PRINEVILLE AND OCHOCO IRRIGATION DISTRICT
REGARDING COMBS FLAT ROAD TO PETERS ROAD EXTENSION PROJECT**

Whereas, on or about February 28, 2023, the City of Prineville (“City”) and Ochoco Irrigation District (“OID”) executed a Funding Agreement (“Agreement”) regarding a project that consisted of extending NE Combs Flat Road approximately 5,900 feet from the intersection of NE Combs Flat Road and NE Whistle Way/NE Ironhorse Drive to the intersection of NE Peters Road and Yellowpine Road and crosses the Barnes Butte wetlands (“Extension”) and piping and rerouting approximately 1.7 miles of existing OID irrigation ditch that currently crosses the proposed roadway alignment and traverses the Barnes Butte Recreation Areas (“OID Project”).

Whereas, the Parties had agreed to work collaboratively on the Extension and OID Project to save each Party substantial Costs.

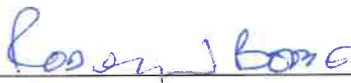
Whereas, through collaborative planning, the Parties have determined it would be financially beneficial to each Party to have one Project that incorporates both the Extension and OID Project.

Whereas, the City and OID have negotiated an Amendment to Funding Agreement (“Amendment”), attached to this Resolution and incorporated herein.

Whereas, City staff believes it is in the best interest of the City to approve and execute the Amendment.

NOW, THEREFORE, the City of Prineville resolves that the attached Amendment is hereby approved and that the Mayor and City Manager are authorized to sign such Amendment on behalf of the City.

Approved by the City Council this 9th day of April, 2024.



Rodney J. Beebe, Mayor

ATTEST:



Lisa Morgan, City Recorder

AMENDMENT TO FUNDING AGREEMENT
between
CITY OF PRINEVILLE and OCHOCO IRRIGATION DISTRICT

THIS AMENDMENT TO FUNDING AGREEMENT (“Amendment”) is executed and effective as of the last date written below by and between **Ochoco Irrigation District**, a quasi-municipal corporation under ORS chapter 545 (“OID”) and the **City of Prineville**, an Oregon municipal corporation (“City”). Both OID and City shall be known as “Party” and collectively “Parties.”

RECITALS

- A. On or about February 28, 2023 the Parties executed a Funding Agreement (“Agreement”) set forth on Exhibit A, attached hereto, regarding a Project identified in the Agreement.
- B. OID’s Project was expected to be contemporaneously constructed during City’s Combs Flat to Peters Road Extension Project (“Extension”).
- C. In planning regarding the Project and Extension, the Parties have determined it would be financially beneficial to each Party to have one Project that incorporates both the Project and Extension.

NOW, THEREFORE, in consideration of the foregoing, the covenants and **agreements** of the Parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree to amend the Agreement as follows:

- 1. **Project.** The “Project” shall hereinafter be defined as the installation of the buried pipeline in place of the current open canal, including a portion referred to as the Ironhorse section, depicted on Exhibit A of the Agreement and the City’s Combs Flat to Peters Road Extension Project defined as the construction of a approximately 1.15 miles of new road connecting Combs Flat Road to Peter’s Road, hereinafter “Project.” The plans and specification for the Project are to be developed by the Parties.
- 2. **Performance.** City hereby agrees to install the Project in accordance with the Plans and Specifications. Using the City’s usual procedures, the City will enter into a construction contract with each successful bidder for the construction of all portions of the Project. In soliciting bids, awarding the construction contracts, managing the construction project and payment to the Contractors, the City shall comply with all applicable state and local public contracting laws, rules, regulations, and ordinances. The City shall not award any contract that exceeds OID’s budget for its responsibilities set out heretofore. The City shall manage the construction of all portions of the Project; however, for any work regarding the canal piping, OID shall be involved and provide approval to any canal piping work prior to installation. OID shall be able to inspect and approve any work regarding the canal piping.

3. **OID's Responsibilities.** OID shall be responsible for costs associated with the canal piping portion of the project, or as identified as the Project in the Agreement ("OID's Project"); however, City shall provide a Maximum City Funding Commitment as defined hereafter.

Within forty-five (45) days of receiving invoices from the City, together with reasonable supporting documentation, OID shall pay to the City for work satisfactorily performed. If any portion of the Project for which City is seeking payment has not been completed or does not substantially conform to the Plans and Specifications, and such non-conformance was not approved by OID in writing, the existence of such incomplete work or non-conformity shall be an excuse to OID's obligation to make the applicable payment until such work has been completed or non-conformity has been corrected. The OID Project shall at all times be deemed to be OID property and City shall have no obligation to maintain, repair or replace any portion of the OID Project. Funds that have been reserved under this Agreement for the Project are not transferable to other projects or activities.

5. **City's Responsibilities.** City shall be responsible for one hundred percent (100%) of the costs for the Combs Flat to Peters Road Extension Project and will further provide up to \$2,000,000.00 (the "Maximum City Funding Commitment") towards the OID Project in the form of direct funds subject to the terms and conditions of the Agreement and this Amendment. In addition to the funding set out above, the City may provide in-kind contributions to the Project at the fair market value of the service, upon the mutual agreement of the Parties. Upon execution of this Amendment, City shall provide OID with a completed IRS Form W-9.

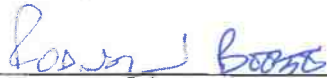
6. Except as amended by this Amendment, all other terms of the Agreement shall remain in full force and effect.

7. This Amendment may be executed in one or more counterparts, including electronically transmitted counterparts, which when taken together shall constitute one in the same instrument. Facsimiles and electronic transmittals of the signed document shall be binding as though they were an original of such signed document.

[Signature Page to Follow]

IN WITNESS HEREOF, City and OID have caused this Agreement to be signed and executed this Agreement, as of the date set out below.

CITY OF PRINEVILLE

By: 
Rodney J. Beebe, Mayor

By: 
Steve Forrester, City Manager

April 9, 2024
Date

April 9, 2024
Date

OCHOCO IRRIGATION DISTRICT

By: _____
Wade Flegel, Board Chairman

By: _____
Bruce Scanlon, Manager

Date

Date

FUNDING AGREEMENT
between
CITY OF PRINEVILLE and OCHOCO IRRIGATION DISTRICT

THIS FUNDING AGREEMENT ("Agreement") is executed and effective as of the last date written below by and between **Ochoco Irrigation District**, a quasi-municipal corporation under ORS chapter 545 ("OID") and the **City of Prineville**, an Oregon municipal corporation ("City"). Both OID and City shall be known as "Party" and collectively "Parties."

RECITALS

- A. OID seeks to install buried pipeline in place of the current open canal, including a portion referred to as the Ironhorse section, depicted on Exhibit A, which is incorporated herein, and hereinafter referred to as "Project."
- B. The estimated costs for the Project are approximately \$6,400,000.00, with funding expected to come from congressionally directed spending through the Watershed Protection and Flood Prevent Act (PL-566).
- C. OID expects roughly \$4,800,000.00 of funding through PL-566.
- D. The Project benefits the City as it parallels its intention of the Combs Flat Road Extension, and the Project would improve public safety, improve transportation infrastructure, water savings/quality improvement, increased housing, and costs savings to the City.
- E. The City is willing to provide Project Assistance in the form of funds through direct appropriations and in-kind contributions.

NOW, THEREFORE, in consideration of the foregoing, the covenants and agreements of the Parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

- 1. **Project Assistance Activities.** The specific project development activities for the Project that are subject of this Agreement are replacing the existing pipe and open canal from NE Laughlin to NE Yellowpine with buried irrigation pipe.
- 2. **Term. Survival.** This Agreement is effective from the date last written below until the completion of the Project unless terminated earlier in accordance with Section 5 below. Sections 6 and 8 and any other provisions of this Agreement, which by their nature extend beyond the term of this Agreement, shall survive termination of this Agreement.
- 3. **City of Prineville Project Assistance Funding.** Provided that this Agreement is fully executed, City will provide up to a maximum of twenty-five percent of the total project Costs or \$2,000,000.00, whichever is the lessor (the "Maximum City Funding Commitment") towards the Project in the form of direct funds subject to the terms and conditions of this Agreement. Funds

that have been reserved under this Agreement for the Project are not transferable to other projects or activities.

4. **City of Prineville Contributions.** In addition to the funding set out above, the City shall provide in-kind contributions to the Project at the fair market value of the service, upon the mutual agreement of the Parties.

5. **Documentation Required for Payment.** Upon execution of this Agreement, OID will provide City with a completed IRS Form W-9. District is solely responsible for ensuring that the Project complies with all federal, state, local, and utility specifications and requirements. City shall have 45 days from City's receipt of all required information for payment processing.

6. **Termination.** City may terminate this Agreement upon ten (10) days' advance written notice to OID, if it determines that OID has utilized the funds for other projects or activities. This Agreement may be terminated by the mutual consent of the Parties, or in the event of Default, which shall be the noncompliance with the terms of the Agreement after a Party has received at least thirty (30) days' notice of the noncomplying term and has failed to cure the breach.

7. **Indemnification.** City and District shall indemnify, save harmless and defend each other, their officers, agents and employees from and against any and all claims, lawsuits or actions for damages, costs, losses and expenses, arising from City or District's provision of services under this Agreement.

8. **No Obligation; No Third-Party Beneficiaries.** OID understands that City's approval of any funding towards the Project described in this Agreement does not imply any commitment by City to provide any additional funding to OID for any additional project development work. This Agreement is made and entered into for the sole purpose and legal benefit of OID and City, and no other person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement.

9. **Governing Law; Attorneys' Fees; Severability.** This Agreement shall be exclusively governed by and construed in accordance with the laws of the State of Oregon, without regard to any conflicts of laws rules thereof. The exclusive jurisdiction for resolution of such disputes will be Oregon, with venue within Crook District, Oregon. In the event that any Party initiates proceedings to enforce this Agreement or the application of such provisions to a Party or circumstances shall be determined by any court of competent jurisdiction to be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement shall remain in full force and effect, unless such construction would be unreasonable.

10. **No Endorsement.** City and/or its representatives do not endorse any manufacturer, contractor, equipment, or system design in delivering this Project.

11. **Integration; Amendment; Interpretation.** This Agreement supersedes all other agreements between the Parties regarding the subject matter and contains their entire understanding as to its subject matter. No amendment to this Agreement will be effective unless

it is in writing and duly executed by authorized representatives of the Parties. This Agreement is the result of negotiations between the Parties and shall be deemed to be the product of each party hereto, and there shall be no presumption that an ambiguity should be construed in favor of or against OID or the City solely because of such Party's actual or alleged role in the drafting of this Agreement.

12. **Assignment.** This Agreement is personal to the Parties and cannot be assigned by either Party without the written consent of the other. Should consent be required under this Agreement, such consent shall not be unreasonably withheld. The foregoing notwithstanding, this Agreement will be bending on, and will inure to the benefit of the Parties and their respective successors and permitted assigns.

12. Miscellaneous.

12.1 **No Agency or Partnership Created.** It is agreed by and between the parties that each of them is carrying out functions on its own behalf, and that neither has the right of direction or control of the manner in which the other party delivers services or materials under this Agreement and that neither party exercises control over the activities of the other when providing services or materials hereunder. City and District are not, by virtue of this Agreement, partners or joint venturers in connection with activities carried out under this Agreement and shall have no obligation with respect to each other's debts or any other liabilities of each and every nature.

12.2 **Limitations.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore.

12.3 **Compliance.** Parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Parties expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

12.4 **Delegation and Reports.** Neither party may delegate its obligations under this Agreement to any other agency, and each party shall provide the other with access to all records pertaining to the services provided by each respective party.

12.5 **Severability.** Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law.

12.6 **Binding Effect and Modification.** This Agreement will be binding on the parties and their respective heirs, executors, administrators, successors, and permitted assigns and will inure to their benefit. This Agreement may be amended only by a written agreement signed by each party. The parties will execute all documents or instruments and will perform all lawful acts necessary or appropriate to secure their rights hereunder and to carry out the intent of this Agreement. All exhibits and other documents referenced in this Agreement are part of this Agreement.

12.7 **Applicable Law and Attorney Fees.** This Agreement will be construed, applied, and enforced in accordance with the laws of the State of Oregon. Any action or proceeding arising out of this Agreement will be litigated in courts located in Crook County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Crook County, Oregon. With respect to any dispute relating to this Agreement, or if a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Agreement, including, without limitation, any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, each party will be responsible for its attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith.

12.8 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or in electronic (i.e., "pdf") format shall be effective as delivery of a manually executed counterpart of this Agreement.

12.9 **Entire Agreement.** This Agreement represents the entire agreement between the Parties relating to the subject matter hereof. This Agreement alone fully and completely expresses the agreement of the Parties relating to the subject matter hereof. There are no other courses of dealing, understanding, agreements, representations, or warranties, written or oral, except as set forth herein.

12.10. **Authority.** Each of the individuals signing this Agreement represent and warrant that he or she has been properly authorized to enter into this Agreement.

[Signature Page to Follow]



- Legend
- Existing & Future ROW
 - Future OID Pipe
 - Taxlots

OID Piping Project

Exhibit A

2020 Aerial

